

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

CHARLEAN McDONALD

PLAINTIFF

VS.

CIVIL ACTION NO. 5:05-cv-67 (DCB) (JCS)

JO ANNE B. BARNHART,
Commissioner of Social Security

DEFENDANT

ORDER

This cause is before the Court on the plaintiff's motion for default judgment (**docket entry 5**) and on the defendant's motion to strike motion for default judgment (**docket entry 6**). Having carefully considered the motions, and being fully advised in the premises, the Court finds as follows:

On May 27, 2005, returns of service of process were entered as to the following: (1) United States Attorney General in Washington, D.C.; (2) Commissioner of Social Security in Falls Church, Virginia; and (3) General Counsel of Social Security Administration in Baltimore, Maryland. On December 5, 2005, the plaintiff filed a motion for default judgment against the defendant for failure to answer the complaint.

The plaintiff has failed to properly serve process. The Notice of Appeals Council Action, attached to the plaintiff's complaint, identifies the procedural requirements for service of summons:

You or your representative must deliver copies of your complaint and of the Summons issued by the court to the U.S. Attorney for the judicial district where you filed

your complaint, as provided in rule 4(I) of the Federal Rules of Civil Procedure.

The notice further states that copies of the summons and complaint must also be served upon the General Counsel Social Security Administration in Baltimore, Maryland, and the United States Attorney General in Washington, D.C. Pursuant to Fed.R.Civ.P. 4(I), service of process is effected "by delivering a copy of the summons and of the complaint to the United States attorney for the district in which the action is brought or to an assistant United States attorney or clerical employee designated by the United States attorney"

The plaintiff has failed to effect service of process upon the United States Attorney for the Southern District of Mississippi, which is the district in which her action is brought. In addition, pursuant to Fed.R.Civ.P. 5(e), the plaintiff may not obtain a default judgment against "the United States or an officer or agency thereof unless the claimant establishes a claim or right to relief by evidence satisfactory to the court." The plaintiff's motion for default judgment shall therefore be stricken. Because the United States Attorney for the Southern District of Mississippi has entered an appearance, the Court shall require the defendant to file an Answer to the Plaintiff's Complaint within sixty (60) days from the date of entry of this Order. Accordingly,

IT IS HEREBY ORDERED that the defendant's motion to strike motion for default judgment **(docket entry 6)** is GRANTED;

FURTHER ORDERED that the plaintiff's motion for default judgment **(docket entry 5)** is STRICKEN.

SO ORDERED, this the 11th day of January, 2006.

S/DAVID BRAMLETTE
UNITED STATES DISTRICT JUDGE